

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**In re:**

**CLAUDE & ANNE MARIE GLOVER,**

**Debtors.**

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**Case No. 00-06680-6B3**

**ORDER**

This case came on the Debtor, Claude Glover's Motion to Avoid a Judgment Lien on Debtor's Exempt Residence Pursuant to 11 U.S.C. §522(f).

Claude and Anne Marie Glover, collectively (the "Debtors") filed for relief pursuant to Chapter XIII of the Bankruptcy Code on August 25, 2000 (Case No.00-06680-6B3). Claude Glover had previously filed for relief under Chapter VII of the Bankruptcy Code on May 30, 1995 (Case No. 95-02710-6B7). A claim by Franklin and Ella Montgomery (the "Montgomerys") who obtained a judicial lien on Mr. Glover's homestead property located at 5320 Carter Rd. Lake Mary, FL in the amount of \$90,208.15, including \$52,466.94 in principal earning 12 percent interest per year and pre-judgment interest in the amount of \$37,741.21 was among the claims in Mr. Glover's Chapter VII case. Mr. Glover's Chapter VII case concluded on September 12, 1995 with the discharge of his existing debts, including the debts owed to the Montgomerys.

Mr. Glover did not file any pleadings prior to discharge and the closing of his Chapter VII case to avoid the judicial lien held by the Montgomerys pursuant to 11 U.S.C. §522(f)(1)(A) and the lien continued in existence, despite the discharge of the underlying debt. Mr. Glover filed a motion on January 31, 1997 to reopen his Chapter VII case to avoid the

Montgomery's judicial lien (Doc. No. 26). Mr. Glover's motion was denied based on the availability of a remedy in a state court. Mr. Glover and his wife Anne Marie Glover are debtors in the instant Chapter XIII case and request this Court to avoid the judicial lien held by the Montgomerys.

The ruling on Mr. Glover's motion in his Chapter VII case to reopen and to avoid the Montgomerys judicial lien is not res judicata to the current determination of whether the lien can now be avoided. A court's order does not have a preclusive effect on future litigation unless that order or judgment constitutes a final decision on the merits. *Wallis v. Justice Oaks II, LTD. (In re Justice Oaks II, LTD., 898 F.2d 1544, 1549 (1990) (citations omitted).* Mr. Glover's motion was denied based on the availability of a remedy in a state court, not on the merits of the motion.

A judicial lien on property of the debtor may be avoided pursuant to 11 U.S.C. §522(f)(1)(A) if the property that is subject to the lien would be exempt but for the existence of the judicial lien. 4 Collier on Bankruptcy ¶ 522.11[2], p. 522-77 (Lawrence P. King et al. eds., 15<sup>th</sup> ed. 2001)(citing *In re Henderson*, 18 F.3d 1305 (5<sup>th</sup> Cir. 1994)). Section 522(f) provides in pertinent part:

(f)(1) Notwithstanding any waiver of exemptions...the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled...if such lien is  
(A) a judicial lien...

11 U.S.C. §522(f)(1)(A). Section 522 (f)(2) then explains what constitutes impairment:

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—  
(i) the lien;  
(ii) all other liens on the property; and  
(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

The Debtor's homestead exemption is impaired in the full amount of the lien held by the Montgomerys. The entire property is exempt pursuant to Article X, § 4 of the Florida Constitution as homestead property and Mr. Glover's interest in the property would be the property's fair market value, since there are no other liens.

The Bankruptcy Code and Rules are silent as to any particular time constraints for raising lien avoidance. *In re Jacobs*, 154 B.R. 359, 361 (Bankr.S.D.Fla. 1992). The majority of courts have held there is no time limit for raising lien avoidance absent prejudice or fraud to creditors. *Id.* (citing *Yazzie v. Postal Finance Co.*, 24 B.R. 576, 577-578 (9<sup>th</sup> Cir. 1982); *In re Jent*, 37 B.R. 561, 563 (Bankr.W.D.Ky. 1984); *In re Chesnut*, 50 B.R. 309, 310 (Bankr.W.D.Ok. 1985)). The objecting creditors, the Montgomerys, have failed to establish any prejudice or fraud as a result of avoiding the lien. Mr. Glover's homestead property squarely falls within the requirements of 11 U.S.C. §522(f)(1)(A).

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that the Motion is due to be **GRANTED**;  
and it is further

**ORDERED ADJUDGED and DECREED** that the judicial lien to the Debtor's homestead property located at 5320 Carter Rd. Lake Mary, FL. held by the Montgomerys is avoided.

Dated this 31st day of July, 2001.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Court